IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6433 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE H.K.RATHOD

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DAHOD NAGAR PALIKA - Petitioner(s)

Versus

NATVAR BIJIYA & 6 - Respondent(s)

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Appearance :
NOTICE SERVED for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1 - 7.
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CORAM : HONOURABLE MR.JUSTICE H.K.RATHOD

Date : 14/02/2006

ORAL JUDGMENT

This Court has, by order dated 21.9.2005, ordered to issue fresh notice to petitioner by making it returnable on 13th October, 2005. This notice has been served upon petitioner Dahod Nagarpalika and yet no appearance has

been filed on behalf of petitioner and petitioner has also not appeared in person. Earlier also on 1st June, 2004, notice was issued to petitioner to engage advocate in view of the elevation of its Advocate Mr. M.R. Shah as a Judge to the bench of this Court. Said notice was also served upon the petitioner and subsequently fresh notice was also served upon petitioner and yet petitioner has failed to appear either in person or through any advocate. In view of that and also in view of the fact that it is a matter of 1999 wherein award of reinstatement made by labour court in the year 1999 has been stayed by this Court while issuing rule, this Court has taken up this matter for final hearing in absence of petitioner though served since benefit of section 17B of the ID Act, 1947 is is also not granted.

2. Through this petition, petitioner Dahod Nagarpalika has challenged award made by labour court,Godhra in Reference No. 20 of 1990 (Old No. 182 of 1984) dated 11th January, 1999 wherein labour court has granted reinstatement with continuity of service without back wages for intervening period in favour of two workmen namely (1) Shri Natvar Bijiya and (2) Shri Bhursing Kalu and also directed petitioner to pay lumsum

amount of Rs.10,000.00 to each in lieu of back wages for intervening period with cost of Rs.2000.00. This Court issued rule on 11th August, 2000. Meanwhile, award made by labour court, Godhra dated 11.1.1999 has been stayed until further order without granting any relief in favour of workman under section 17B of the ID Act, 1947. Initially, reference was made at the instance of eight workmen those who are respondents in this petition. Out of eight workmen, (1) Shri Natvar Bijiya and (2) Shri Bhursing Kalu are respondents No. 1 and 4 respectively in this petition. Rest of respondents have been reinstated in service by petitioner, therefore, labour court has not granted any relief in their favour except (1) Shri Natvar Bijiya and (2) Shri Bhursing Kalu.

3. Before labour court, statement of claim was filed by workmen against which written statement was filed by petitioner. Both the parties have produced certain documents before labour court and oral evidence was also led before labour court by the parties. Labour Court has discussed evidence on record in para 1 to 16. Labour court has also discussed in aforesaid paragraphs about documents and contentions of respective parties. Thereafter, labour court has given reasoning from

paragraph 17. Labour Court has come to conclusion that in reference, total eight workmen are concerned whose termination order was challenged by concerned workmen. Before labour court, vide Exh. 12 and 13, two workmen namely Bhursing Kalu and Natvar Bigiya were examined and workmen were represented by their representative Shri Bhogibhai Makwana before the labour court that now said reference has to be decided by labour court in respect of these workmen Bhursing Kalu and Natvar Bijiya. Labour court discussed evidence led before labour court that said two workmen were working as daily rated employees in petitioner establishment and at the relevant time when their services were terminated, no notice or notice pay in lieu thereof and retrenchment compensation were paid by petitioner to them. Before labour court, it was contended by petitioner that after reference was made, these two workmen were called by petitioner and they were working with petitioner. These facts were disproved by oral evidence of two workmen before labour court. Both workmen denied such assertions made by petitioner and specifically averred that both were called by petitioner but when they had gone to resume in response to such call, they were not permitted by petitioner to resume duty. Not only that, in response to purshis filed by

petitioner vide Exh.10, both workmen had reported for work but were not allowed by petitioner nagarpalika. Labour court discussed oral evidence of Harendra Sheth at Exh.31 and ultimately, considering the other evidence of petitioner vide Exh.22, 23 and 29, labour court has come to the conclusion that if petitioner is right to his contention that these workmen were called by Nagarpalika and they were not reporting for work, then, it was duty of Nagarpalika to inform them by letter that inspite of calling them, they are not reporting for work. Labour Court also observed that no such correspondence was produced by petitioner before it. Labour court has come to the conclusion that whatever documents have been produced by petitioner vide Exh. 18 and 25 are got up by petitioner nagarpalika and these documents are not proved by oral evidence of witness for petitioner nagarpalika. Not only that, workmen those who gave evidence before labour court were not examined by petitioner in respect of documentary evidence which was produced by it before labour court. Ultimately, after appreciating oral and documentary evidence, labour court has come to conclusion that the services of these two workmen who were working since more than ten years were terminated by petitioner without following legal procedure under the ID Act, 1947,

therefore, labour court set aside termination order as it was arbitrary and violative of section 25F of the ID Act. Labour Court has also observed that rest of six workmen are working with petitioner and aforesaid two workmen were not allowed to resume duty and termination of their service is illegal and violative of sec.25F of the ID Act, 1947. Labour court has also considered the question of back wages while granting reinstatement and has not granted back wages for intervening period but in lieu thereof, has granted lumsum compensation of Rs.10,000.00 only for intervening period of fifteen years keeping in view that the petitioner is a State Authority and grant of back wages would unnecessary create burden on the public exchequer and therefore, mere reinstatement has been granted with continuity of service with lumsum compensation of Rs.10000.00 was granted by labour court to each workmen though petitioner nagarpalika has not proved gainful employment of these two workmen by leading proper evidence. It was deposed by both workmen before labour court that they remained unemployed during intervening period and their such version was not controverted by petitioner by leading any evidence to the contrary. Inspite of that, labour court refrained it from granting back wages for intervening period of fifteen

years.

I have perused award in question. Labour court has discussed all evidence led before it and has given cogent and convincing reasons in support of its conclusion. This matter has been examined by this Court in absence of petitioner due to reason that the award passed by labour court in the year 1999 relating to the termination of the year 1983 has remained stayed pursuant to interim order passed by this Court without any condition for compliance of section 17B of the ID Act, 1947 and that interim order is still continuing for more than six years. Considering these aspects of the matter, this Court has examined matter in absence of petitioner, on merits. This Court has also considered the fact that this matter can be dismissed for default since no appearance has been filed by petitioner either in person or through any advocate but this would give another round of litigation in favour of petitioner which would delay matter and agony of workmen who are out of service since 1983 for further uncertain period which is not desirable and therefore, this court thought it proper to put an end to this agony of workmen by examining merits of matter in absence of petitioner.

In view of these facts, labour court has rightly appreciated the oral as well as documentary evidence produced by parties before it. Finding of fact recorded by labour court that the termination is arbitrary and violative of section 25F of the ID Act, 1947 is correct. Both the workmen had completed more than ten years continuous service and that evidence was not disproved by petitioner by producing any evidence to the contrary. Therefore, labour court was right in granting reinstatement with continuity of service. This fact is taken into consideration other way as according to the petitioner, they are prepared to reinstate workmen as per their written statement before labour court, therefore, there is nothing wrong in granting reinstatement considering contention of petitioner in its written statement before labour court. As regards back wages, workmen remained out of job for more than fifteen years and their gainful employment for intervening period was not proved by petitioner before labour court and yet labour court denied back wages and that part of the award has not been challenged by workmen before this Court. Therefore, there is no error committed by labour court while passing such award and the award passed by labour

court would not warrant any interference of this Court in exercise of powers under Article 227 of the Constitution of India. Labour court has not committed any jurisdictional error while passing award in question. There is no any infirmity in the award in question, therefore, award made by labour court is legal and valid and there is no substance in this petition. Therefore, this petition is dismissed. Rule is discharged. Interim relief stands vacated. No order as to costs.

Considering special facts and circumstances of the case and negligence on the part of petitioner and also considering the fact that the award of reinstatement without back wages for intervening period has remained stayed for a period of about six years without any benefit of section 17B of the ID Act, 1947 and also considering the fact that the workmen are out of job since 1983, petitioner Dahod Nagarpalika is directed to reinstate both workmen namely (1) Shri Natvar Bijiya and (2) Shri Bhursing Kalu in service with continuity of service within one month from the date of receipt of copy of this order and to pay full wages to them with effect from the date of award 11th January 1999 till the date of their actual reinstatement within two months from the

date of receipt of copy of this order. Petitioner is also directed to pay Rs.10,000.00 (Rs.ten thousand only) to both workmen (1) Shri Natvar Bijiya and (2) ShriBhursing Kalu within three months from the date of receipt of copy of this order.

(H.K. Rathod,J.)

Vyas